

1 **So Ordered.**



2 *Patricia C. Williams*
3 Patricia C. Williams
4 Bankruptcy Judge

5 **Dated: October 18th, 2012**

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9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF WASHINGTON

11 In re ...

12 **MID-MOUNTAIN MACHINERY, INC.,**

13
14
15 Debtor.

16 No. **11-02930-PCW11**
17 Chapter **11**

18 **FINDINGS OF FACT AND**
19 **CONCLUSIONS OF LAW RE:**
20 **CONFIRMATION OF SECOND**
21 **AMENDED AND MODIFIED**
22 **PLAN OF REORGANIZATION**

23 This matter came on for hearing upon the Second Amended And Modified Plan Of
24 Reorganization that was filed by Mid-Mountain Machinery, Inc. ("Mid-Mountain") on
25 October 5, 2012. The Court considered the comments of counsel, and the records and files
 herein, including the following:

- 26 ▪ Second Amended Disclosure Statement [*Docket No. 183*];
- 27 ▪ First Amended Plan Of Reorganization [*Docket No. 184*];

- 1 ▪ Order Approving Second Amended Disclosure Statement [*Docket*
- 2 No. 191];
- 3 ▪ Notice of Approval Of Second Amended Disclosure Statement,
- 4 Proposed First Amended Plan Of Reorganization, And Matters
- 5 Relating To Confirmation Of Plan [*Docket No. 192*];
- 6 ▪ List Classifying Claims And Interests [*Docket No. 133*];
- 7 ▪ Report Of Balloting and Ballot Summary [*Docket No. 225*];
- 8 ▪ Banner Bank's Objection to Confirmation [*Docket No. 226*];
- 9 ▪ CNH Capital America, LLC's Objection to Confirmation [*Docket*
- 10 No. 228];
- 11 ▪ First Amended And Modified Plan Of Reorganization [*Docket*
- 12 No. 386];
- 13 ▪ Notice Of: 1) Hearing Re: Confirmation Of First Amended And
- 14 Modified Plan Of Reorganization; Motion To Shorten Time; Matters
- 15 Relating To Confirmation Of Plan; And 2) Hearing Re: Debtor's
- 16 Motion For Order Authorizing Assumption Of Lease [*Docket*
- 17 No. 390];
- 18 ▪ Second Amended And Modified Plan Of Reorganization [*Docket*
- 19 No. 393];
- 20 ▪ Stipulation On Confirmation Of Second Amended Plan Of
- 21 Reorganization [*Docket No. 394*];
- 22 ▪ CNH's Withdrawal Of Motion To Dismiss And Objection To Motion
- 23 To Assume [*Docket No. 397*];
- 24 ▪ Notice Of Filing Of Second Amended And Modified Plan Of
- 25 Reorganization [*Docket No. 398*];

- 1 ▪ Declaration Of Mark V. Blutcher In Support Of Confirmation Of
- 2 Second Amended And Modified Plan Of Reorganization [*Docket*
- 3 *No. 400*]; and
- 4 ▪ Memorandum In Support Of Confirmation Of Second Amended And
- 5 Modified Plan Of Reorganization [*Docket No. 401*].

6 Based on the foregoing, the Court enters the following FINDINGS OF FACT:

- 7 1. The Debtor filed a Second Amended Disclosure Statement (the “Disclosure
- 8 Statement”) and a First Amended Plan Of Reorganization on February 6, 2012.
- 9 2. On February 10, 2012, following appropriate motion and notice, the Court
- 10 entered an Order Approving Second Amended Disclosure Statement (the “Order”).
- 11 3. The Debtor transmitted the Disclosure Statement, the First Amended Plan Of
- 12 Reorganization, and related materials to the Master Mailing List on February 10, 2012.
- 13 4. The First Amended Plan Of Reorganization was accepted by all claimants that
- 14 cast ballots, except Banner Bank and CNH Capital America, LLC (“CNH”).
- 15 5. Banner Bank and CNH filed objections to confirmation of the First Amended
- 16 Plan Of Reorganization on March 12, 2012. No other objections to confirmation of the First
- 17 Amended Plan Of Reorganization were filed.
- 18 6. The Debtor filed a First Amended And Modified Plan Of Reorganization on
- 19 September 24, 2012.
- 20 7. The Debtor filed a Second Amended And Modified Plan Of Reorganization
- 21 on October 5, 2012 (the “Plan”).
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1 8. The Debtor filed a Stipulation On Confirmation Of Second Amended Plan Of
2 Reorganization on October 5, 2012 (the "Stipulation") executed by Mid-Mountain, CNH,
3 Banner Bank, Mark V. Blutcher, and Douglas D. Helton that set forth the treatment for
4 CNH and Banner Bank under the Plan. In the Stipulation, Banner Bank and CNH each
5 agreed to (1) cast an Amended Ballot accepting the Plan, (2) stipulate to the entry of the
6 order confirming the Plan, and (3) waive any right of appeal.
7

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9 9. The Debtor transmitted a Notice Of Filing Of Second Amended And Modified
10 Plan Of Reorganization to the Master Mailing List on October 10, 2012.
11

12 10. The Plan contains no unusual classifications of claims or interest. Similar
13 claims are classified together, and are treated equally within each class. The Plan provides
14 the same treatment for each claim or interest within a particular class.
15

16 11. The Debtor did not solicit acceptances or rejections of the Plan except as
17 authorized by the Order.
18

19 12. The Plan provides for payment of all allowed Priority Tax Claims in regular
20 installment payments in cash of a total value, as of the Effective Date of the Plan, equal to
21 the allowed amount of such claim over a period ending not later than five (5) years after the
22 Petition Date in a manner not less favorable than the most favored nonpriority unsecured
23 claim provided for by the Plan (other than cash payments made to a class of creditors under
24 11 U.S.C. § 1122(b)). Mid-Mountain believes that there are no Priority Tax Claims.
25 Banner Bank and CNH will receive the plan treatment that is set forth in the Stipulation.

1 General unsecured creditors will receive full payment of the principal amount of their
2 allowed claims, without interest.

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4 13. The Plan has been proposed in good faith and not by any means forbidden by
5 law.

6
7 14. The compensation of Davidson Backman Medeiros PLLC and Kent Berreth,
8 CPA for services rendered through the Confirmation Date will be subject to Court approval
9 after notice and hearing. Davidson Backman Medeiros PLLC and Kent Berreth, CPA will
10 be employed after confirmation at their normal and usual hourly rates, plus reimbursement
11 for expenses.

12
13 15. The Debtor will continue operating its business, subject to the terms of the
14 Plan. There will be no other insiders employed or retained after reorganization, except as
15 disclosed in the Disclosure Statement. The continuance in office of such individuals is
16 consistent with the interests of creditors and equity security holders and with public policy.

17
18 16. The Plan provides for no rate changes after confirmation of the Plan with any
19 governmental regulatory commission with jurisdiction over the rates of the Debtor.

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21 17. Class 3, Class 4, Class 11, and Class 13 are impaired. Class 3, Class 4,
22 Class 11, and Class 13 claimants have voted to accept the Plan, resulting in acceptance of
23 the Plan by one hundred percent (100%) by amount and one hundred percent (100%) by
24 number of those claimants that voted.
25

1 18. According to the Declaration of Mark V. Blutcher and the Liquidation
2 Analysis, creditors will receive a greater distribution under the Plan than would be received
3 if the assets of the Debtor were liquidated by a Chapter 7 Trustee or by any other means.
4

5 19. The Plan provides for the financial reorganization of the Debtor.
6 Confirmation of the Plan is not likely to be followed by the need for further financial
7 reorganization of the Debtor.
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9 20. The Plan provides for payment of administrative claims upon allowance by
10 the Court.
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12 21. The Plan provides for payment of all U.S. Trustee fees when due, through the
13 closing of the case.
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15 22. The Debtor sponsors no retiree benefits.
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17 23. The Debtor is a corporate debtor engaged in business.
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19 Based on the foregoing FINDINGS OF FACT, the Court enters the following
20 CONCLUSIONS OF LAW:
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22 1. The Plan has been accepted in writing by the creditors and equity security
23 holders whose acceptance is required by law; and
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25 2. The provisions of Chapter 11 have been complied with; the Plan has been
proposed in good faith and not by means forbidden by law; and

 3. Each holder of a claim or interest has accepted the Plan or will receive or
retain under the Plan, property of a value, as of the Effective Date of the Plan, that is not less

1 than the amount that such holder would receive or retain if the Debtor were liquidated under
2 Chapter 7 of the Code on such date, or the Plan does not discriminate unfairly, and is fair
3 and equitable with respect to each class of claims or interests that are impaired under the
4 Plan and has not accepted the Plan; and

5
6 4. All payments made or promised by the Debtor by a person issuing securities
7 or acquiring property under the Plan or by any other person for services or for costs and
8 expenses in, or in connection with, the Plan and incident to the case, have been fully
9 disclosed to the Court and are reasonable or, if to be fixed after confirmation of the Plan,
10 will be subject to approval of the Court; and
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12
13 5. The identity, qualifications, and affiliations of the persons who are to be
14 directors or officers, if any, of the Debtor after confirmation of the Plan have been fully
15 disclosed, and the appointment of such persons to such offices or the continued appointment
16 of such persons to such offices, or their continuance therein, is equitable and consistent with
17 the interests of the creditors and equity security holders and with public policy; and
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19 6. The identity of any insider that will be employed or retained by the Debtor and
20 their compensation has been fully disclosed; and
21

22 7. Confirmation of the Plan is not likely to be followed by the need for further
23 financial reorganization of the Debtor; and
24

25 8. The Plan shall be substantially consummated pursuant to 11 U.S.C. § 1101(2)
upon assumption by the Debtor of the management of the property dealt with under the

1 Plan, upon full payment of all administrative expenses, and upon the conclusion of all
2 adversary and contested matters.

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4 /// End of Order ///

5 Presented by:

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7 /s/ Barry W. Davidson

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